



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

Joseph A. Woodruff, Esquire
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511 Union Street, Suite 2700
Nashville, TN 37219

MAR 20 2007

RE: MUR 5790
Bob Corker for Senate and
Kim Kaegi, in her official capacity
as treasurer

Dear Mr. Woodruff:

On August 15, 2006, the Federal Election Commission notified your clients, Bob Corker for Senate and Kim Kaegi, in her official capacity as treasurer, of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended (the "Act"). On March 6, 2007, the Commission found no reason to believe that your clients violated 2 U.S.C. § 434(a)(6)(B) and 11 C.F.R. § 400.22(a) with respect to the Form 10 that was sent by overnight mail to the Secretary of the Senate and irradiated, and 2 U.S.C. § 434(a)(6)(A) with respect to two candidate loans that were received after the 20th day, but more than 48 hours before, the 2006 primary election. Additionally, in an exercise of prosecutorial discretion, the Commission dismissed the allegations that your clients violated 2 U.S.C. § 434(a)(6)(B) and 11 C.F.R. § 400.21(a) with respect to the Form 10 that was filed one day late, and 2 U.S.C. § 434(a)(6)(A) by failing to timely file three 48-hour notices for contributions totaling \$33,700. *See Heckler v. Chaney*, 470 U.S. 821 (1985). Accordingly, the Commission closed its file in this matter.

The Commission reminds your clients that a Senate candidate's principal campaign committee must notify the Commission, the Secretary of the Senate, and each opposing candidate when the candidate makes an expenditure from personal funds exceeding two times the threshold amount, and must do so within 24 hours. 2 U.S.C. § 434(a)(6)(B)(iii); 11 C.F.R. § 400.21(a). Further, a Senate candidate's authorized committee shall notify the Commission and the Secretary of the Senate of any contribution of \$1,000 or more that it receives after the 20th day, but more than 48 hours, before 12:01 a.m. of the day of an election, and must do so within 48 hours of receipt of the contribution. 2 U.S.C. § 434(a)(6)(A); 11 C.F.R. § 104.5(f). Your clients should take steps to ensure compliance with these provisions in the future.

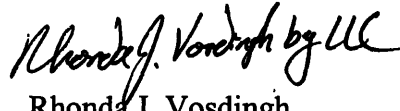
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Documents related to the case will be placed on the public record within 30 days. *See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files*, 68 Fed. Reg. 70,426 (Dec. 18, 2003). A copy of the Factual and Legal Analysis explaining the Commission's decision is enclosed for your information.

If you have any questions, please contact Roy Q. Lockett, the attorney assigned to this matter, at 202-694-1650.

Sincerely,

Thomasenia P. Duncan
Acting General Counsel



BY: Rhonda J. Vosdigh
Associate General Counsel
for Enforcement

Enclosure
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4 **RESPONDENTS:** Bob Corker for Senate MUR 5790
5 and Kim Kaegi
6 in her official capacity as treasurer
7

8 **I. INTRODUCTION**

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10 This matter concerns reporting requirements arising under the so-called "Millionaires'
11 Amendment," as well as 48-hour reporting requirements. The complaint alleges that Bob
12 Corker for Senate and Kim Kaegi, in her official capacity as treasurer (the "Committee"), failed to
13 timely file two 24-Hour Notices of Expenditures of Personal Funds ("Form 10s") for loans to the
14 Committee from Corker's personal funds. It also alleges that the Committee failed to timely file
15 with the Commission 48-hour notices for two of the same candidate loans. Finally, the complaint
16 alleges that the Committee did not timely file 48-hour notices for 42 other contributions from other
17 persons totaling \$61,000.

18 Based on the reasons outlined below, the Commission exercised its prosecutorial discretion
19 to dismiss with admonition the allegations pertaining to the late filing of its initial Form 10 and
20 three 48-hour notices for contributions from other persons totaling \$33,700. The Commission
21 found no reason to believe the Committee failed to timely file a subsequent Form 10 and 48-hour
22 notices for two candidate loans, and closed the file as to the Committee.
23

II. FACTUAL AND LEGAL ANALYSIS

A. Reporting of Personal Funds Expenditures

1. Facts

Corker, who filed his Statement of Candidacy with the Commission on October 14, 2004, made \$2,100 in expenditures from his personal funds for his primary election campaign between that date and mid-July 2005. For a year thereafter, he made no further expenditures from personal funds. Then, between July 3 and July 18, 2006, Corker made three loans in the amounts of \$200,000, \$445,000, and \$1,100,000, respectively. The last loan raised his total expenditures of personal funds with respect to the primary election to \$1,747,100, and triggered the reporting requirements of the Millionaires' Amendment.¹ On July 19, 2006, the Committee faxed a Form 10 to the Secretary of Senate, which disclosed the loans made on July 3, July 10, and July 18, 2006; the fax time stamp on this document reads "07/19/06 WED 22:44 [10:44 p.m.]."² The Secretary of the Senate acknowledged receipt of this document on July 20, 2006 via a time-stamp at 7:21 a.m. According to the Respondents, the Committee also notified the opposing candidates, Van Hilleary and Ed Bryant, of the Form 10. In its response, it included letters from representatives of those committees acknowledging timely receipt. *See Response*. However, the Committee never transmitted a copy of the Form 10 to the Commission.

¹ The threshold amount is the sum of \$150,000 plus an amount equal to the voting age population of the state multiplied by 4 cents. *See* 11 C.F.R. § 400.9. In the case of Tennessee in 2006, the threshold amount was \$332,880 (\$150,000 + (\$4,572,000 x .04)). Two times that threshold amount is \$665,760 (\$332,880 x 2).

² Within four minutes, the Committee faxed another version of its initial Form 10 to the Secretary of the Senate identical to the previously faxed Form 10 with the exception of the date; the original faxed Form 10 is dated "6-19-6" and the second amends the date to read, "7-19-6." On Friday, July 21, 2006, the Committee faxed to the Secretary of the Senate another Form 10 that added the \$2,100 in earlier contributions in the space on the form for "expenditures reported previously in the election cycle." The Secretary of the Senate time stamped this form on Monday, July 24, 2006 and forwarded it to the Commission, which received it on that day.

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On July 25, 2006, Corker made another loan to the Committee in the amount of \$420,000, increasing his total expenditures from personal funds to \$2,167,100. This time the Committee directly notified the Commission via facsimile on July 26, 2004, within 24 hours of the expenditure. As with the initial Form 10, representatives of Corker's opponents aver that their campaigns also timely received this Form 10. However, this time the Committee mailed the Form 10 to the Secretary of the Senate. The Secretary of the Senate's time stamp on the document bears the date of August 4, 2006.

The Respondents maintain that the two Form 10s were filed timely based on the facsimile transmission dates and times on the initial Form 10 for the July 18, 2006 expenditure, and on the subsequent Form 10 for the July 25, 2006 expenditure.

2. Analysis

A Senate candidate or his or her principal campaign committee must notify the Commission, the Secretary of the Senate, and each opposing candidate when the candidate makes an expenditure from personal funds exceeding two times the threshold amount. 2 U.S.C. § 434(a)(6)(B)(iii); 11 C.F.R. § 400.21(a). This notification must be received within 24 hours of the time such expenditure is made, *id.*, and notifications will be considered timely filed if received by facsimile or email by each of the appropriate parties within that time period. 11 C.F.R. § 100.19(g). For each additional expenditure aggregating \$10,000 or more, the candidate or his or her principal campaign committee is also required to notify the Secretary of the Senate, the Commission and each opposing candidate in a Form 10 filing within 24 hours of the time such expenditure is made. *See* 2 U.S.C. §§ 434(a)(6)(B)(iv) and (v); 11 C.F.R. § 400.22(a).

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1 Corker's \$1,100,000 loan on July 18, 2006 caused his total personal expenditures for the
2 primary election to exceed \$665,760, the amount representing two times the threshold amount. *See*
3 footnote 1. Therefore, the Committee was required to notify the Secretary of the Senate, the
4 Commission and the candidate's opponents in a Form 10 filing within 24 hours of making the
5 expenditure, or by July 19, 2006. Although the Committee timely notified the Secretary of the
6 Senate and Corker's opponents by facsimile on July 19, 2006, it did not directly notify the
7 Commission of these expenditures at all. When the Secretary of the Senate notified the
8 Commission of the Form 10 on July 20, 2006, the 24-hour deadline had passed.

9 The Committee failed to timely notify the Commission of the initial Form 10. However, the
10 Commission received the initial Form 10 only one day late; the Secretary of the Senate and Corker's
11 opponents were timely notified. Therefore, the Commission, as a matter of prosecutorial discretion,
12 has decided to dismiss with admonition the allegation in the complaint that Bob Corker for Senate
13 and Kim Kaegi, in her official capacity as treasurer, violated 2 U.S.C. § 434(a)(6)(B) and 11 C.F.R.
14 § 400.21(a) by failing to timely file its initial Form 10 to the Commission. *See Heckler v. Chaney*,
15 470 U.S. 831 (1985).

16 As for the Form 10 that disclosed a \$420,000 personal loan made by the candidate on
17 July 25, 2006, the Committee timely notified both the Commission and Corker's primary opponents
18 on July 26, 2006. Rather than faxing the Form 10 to the Secretary of the Senate as it had with the
19 initial Form 10, the Committee mailed it. The Secretary of the Senate time-stamped its receipt of
20 this Form 10 on August 4, 2006, after the 24-hour deadline had passed.

21 The Instructions to Form 10 provide only a physical address and a P.O. box for the Secretary
22 of the Senate, not a facsimile number or an e-mail address. However, because all outside mail is

first physically received off-site for irradiation, a process that can take several days, even when the Senate's contractor timely receives the mailings, the Secretary of the Senate's time-stamps will not reflect their receipt within 24 hours. Therefore, the Commission finds no reason to believe that Bob Corker for Senate and Kim Kaegi, in her official capacity as treasurer, violated 2 U.S.C. § 434(a)(6)(B) and 11 C.F.R. § 400.22(a) in connection with its subsequent Form 10 filing.

B. Reporting of 48-Hour Notices for Contributions/Loans Received

1. Corker's Personal Loans

a. Facts

The complaint also alleges that the Committee "failed entirely to file 48-Hour Notices notifying the Commission of [Corker's] own personal contributions totaling \$1,520,000," a reference to the July 18, 2006 \$1,100,000 and July 25, 2006 \$420,000 candidate personal loans discussed above. In response, Committee maintains that it "reported the transactions timely and completely" and note that the only "administrative oversight with respect to the filing of [the initial] Form 10 is that the Treasurer did not place a check mark next to item 13(a) of the form indicating that the filing was a substitute for Form 6," the form generally used to report 48-hour contributions. The initial Form 10 shows that the Committee completed the name of the employer on item 13(b) and the appropriate occupation on item 13(c), information that also is included on Form 6. However, the Committee did not place a check next to item 13(a) in the Form 10 to indicate that the filing was intended to satisfy the Form 6 filing requirement as well. With respect to the subsequent Form 10 filed on July 26, 2006, the Committee completed all information on section 13 of the form, including the placement of an "X" next to item 13(a).

b. Analysis

If any contribution of \$1,000 or more is received by any authorized committee of a candidate after the 20th day, but more than 48 hours, before 12:01 a.m. of the day of an election, the principal campaign committee of that candidate shall notify the Commission and the Secretary of the Senate within 48 hours of receipt of the contribution. 2 U.S.C. § 434(a)(6)(A); 11 C.F.R. § 104.5(f). Senate candidates may timely file with both the Secretary of the Senate and the Commission by filing Form 6 with the Secretary of the Senate within 48 hours of making the expenditure. *See* Instructions to Form 6. Additionally, in the limited circumstance where the same receipts trigger notification requirements under both the Millionaires' Amendment and the 48 hour notice rules, Senate candidates may file a Form 10 within 24 hours with the Senate, completing section 13 of the Form 10 instead of filing a separate Form 6; such a filing will satisfy the 48-hour notice requirements for both the Senate and the Commission, and the Millionaires' amendment notification to the Senate. *See* Instructions to FEC Form 10.

The complaint accurately identifies Corker's \$1,100,000 and \$420,000 personal loans as expenditures that required 48-hour notices, because both were made after the 20th day, but more than 48 hours before, the 2006 primary election. However, the Respondents' Form 10s reflecting the loans at issue were proper substitutes for Form 6s. In both cases, the Commission received timely notice of the expenditures. With respect to the \$1,100,000 loan, the Committee faxed the Form 10 to the Secretary of the Senate within 24 hours of its receipt of the loan, albeit failing to place a check next to item 13(a). As for the \$420,000 personal loan, the Commission received the Form 10 within 24 hours.

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Therefore, there is no reason to believe that Bob Corker for Senate and Kim Kaegi, in her official capacity as treasurer, violated 2 U.S.C. § 434(a)(6)(A) in connection with two candidate loans that were made after the 20th day, but more than 48 hours before, the 2006 primary election.

2. Non-Candidate Contributions

a. Facts

The complaint also alleges that the Committee did not timely file 48-hour notifications for other contributions from 42 individuals totaling \$61,000. According to its disclosure reports, the Committee received all of these contributions, which were made between July 18, 2006 and July 28, 2006, after the 20th day, but more than 48 hours before the August 3, 2006 primary election. In response to the complaint, the Committee maintains that it timely notified the Secretary of the Senate of the contributions that it received on July 19 and 20, 2006, "in a seven-page report on FEC Form 6 filed by facsimile transmission on Friday, July 21, 2006." *See* Response at 2. However, "with respect to the remaining 48 hour notices set out in the exhibit to the [c]omplaint," the Committee concedes that its staff "erroneously excluded Sundays when calculating the period of time within which the report was due to be submitted." *Id.*

b. Analysis

Authorized committees that are not required to file electronically may file 48-hour notifications of contributions using facsimile machines. 11 C.F.R. § 100.19(e). *See* Instructions to Form 6 (includes the Secretary of the Senate's facsimile number). The Committee's Form 6 filings for the 2006 primary election show that it timely faxed the notices to the Secretary of the Senate for contributions received on July 19th and July 20, 2006 on July 21, 2006. The Committee also timely

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1 faxed a Form 6 to the Secretary of the Senate disclosing contributions received on July 27, 2006 on
2 Saturday, July 29, 2006.

3 However, as conceded by the Committee, it failed to timely file Form 6s for \$33,700 in
4 contributions received on July 18, July 21 and July 28, 2006, all of which were one day late. With
5 respect to the contributions received on July 18, 2006, the Committee faxed the Form 6 to the
6 Secretary of the Senate on Friday, July 21, 2006. For the July 21 and 28, 2006 contributions, Form
7 6s were faxed on consecutive Mondays: July 24, 2006 and July 31, 2006, respectively.

8 Nevertheless, we conclude that the complaint's corresponding allegation should be
9 dismissed with admonition. Although the Form 6s in issue were slightly late, based on the facts and
10 circumstances of this matter, and in the proper ordering of our priorities and resources, we do not
11 consider further enforcement action necessary.

12 Therefore, the Commission, as a matter of prosecutorial discretion, has decided to dismiss
13 with admonition the allegations in the complaint that Bob Corker for Senate and Kim Kaegi, in her
14 official capacity as treasurer, violated 2 U.S.C. § 434(a)(6)(A) by failing to timely file three 48-hour
15 notices for contributions totaling \$33,700. *See Heckler v. Chaney, supra.*

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